

# CHAPTER 11: OTHER FEDERAL REQUIREMENTS



Besides the rules and requirements for HOME that this book has covered to this point, there are several additional broad Federal rules that must be adhered to in the course of administering the program. This chapter covers those “other Federal requirements.” While the participating jurisdiction (PJ) is responsible for implementing these rules, owners, developers, Community Housing Development Organizations (CHDOs) and other nonprofits should also be aware of them and ensure a project or activity's compliance.

The Federal requirements addressed in this chapter are in the following areas: non-discrimination and equal access, employment and contracting, environmental requirements, lead-based paint, and relocation.

## NOTES

### NON-DISCRIMINATION AND EQUAL ACCESS

- ◆ No person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded, denied benefits or subjected to discrimination under any program funded in whole or in part by HOME funds.
- ◆ Consequently, HOME PJs must take measures to ensure non-discriminatory treatment, outreach and access to program resources. This applies to employment and contracting, as well as to marketing and selection of program participants.

#### Fair Housing and Equal Opportunity

- ◆ HOME PJs and their activities must comply with all of the following Federal laws, executive orders and regulations pertaining to fair housing and equal opportunity. They are summarized below.
  - Title VI of the Civil Rights Act of 1964, As Amended (42 U.S.C. 2000d et seq.): States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin. The regulations implementing the Title VI Civil Rights Act provisions for HUD programs may be found in 24 CFR Part 1.

- The Fair Housing Act (42 U.S.C. 3601-3620): Prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Furthermore, section 104(b)(2) of the Act requires that each grantee certify to the secretary of HUD that it is affirmatively furthering fair housing. The certification specifically requires grantees to conduct a fair housing analysis, develop a fair housing plan, take appropriate actions to overcome the effects of any impediments identified and maintain records on the analysis, plan and actions in this regard. Fair Housing Act implementing regulations for HUD programs may be found in 24 CFR Part 100-115.
- Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259): Prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Equal Opportunity in Housing regulations may be found in 24 CFR Part 107.
- Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101): Prohibits age discrimination in programs receiving Federal financial assistance. Age Discrimination Act regulations may be found in 24 CFR Part 146.

### **Affirmative Marketing**

- ◆ PJs must adopt affirmative marketing procedures and requirements for all housing with five or more HOME-assisted units. (Procedures are not required for tenant-based rental assistance (TBRA) recipients.) States must require state recipients to adopt procedures and requirements that include the elements discussed below.
- ◆ **Elements:** Requirements and procedures must include:
  - Methods for informing the public, owners and potential tenants about fair housing laws and the PJ's policies (for example: use of the Fair Housing logo, or equal opportunity language);
  - A description of what owners and/or the PJ will do to affirmatively market housing assisted with HOME funds;

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- A description of what owners and/or the PJ will do to inform persons not likely to apply for housing without special outreach;
- Maintenance of records to document actions taken to affirmatively market HOME-assisted units and to assess marketing effectiveness; and
- Description of how efforts will be assessed and what corrective actions will be taken where requirements are not met.

### **Handicapped Accessibility**

- ◆ The HOME regulations also require adherence to the three following regulations governing the accessibility of Federally-assisted buildings, facilities and programs.
  - Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225): Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.
  - Fair Housing Act: Multi-family dwellings must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-19).
  - Section 504: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in Federally assisted programs on the basis of handicap. Section 504 imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive Federal funds. Under Section 504, recipients and subrecipients are defined more broadly than under the HOME program. Section 504 recipients and subrecipients include any entity that receives Federal funding (for example, a subrecipient or CHDO). The specific requirements under Section 504 are summarized in Exhibit 11-1.

| Exhibit 11-1  |  |
|---|--|
| Section 504 Requirements  |  |
| Removal of Physical Barriers  |  |
| <ul style="list-style-type: none"> <li>For <b>new construction</b> of multi-family projects, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent of the units (but not less than one unit) must be accessible to individuals with sensory impairments.</li> <li>The Section 504 definition of <b>substantial rehabilitation</b> multi-family projects includes construction in a project with 15 or more units for which the rehabilitation costs will be 75 percent or more of the replacement cost. In such developments, 5 percent of the units in the project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent (but not less than one unit) must be accessible to individuals with sensory impairments.</li> <li>When <b>rehabilitation less extensive than substantial rehabilitation</b> is undertaken, alterations must, to the maximum extent feasible, make the unit accessible to and usable by individuals with handicaps, until 5 percent of the units are accessible to people with mobility impairments. Alterations to common spaces must, to the maximum extent feasible, make the project accessible.</li> <li>Accessible units must be, to the maximum extent feasible, distributed throughout projects and sites and must be available in a sufficient range of sizes and amenities so as to not limit choice.</li> <li>Owners and managers of projects with accessible units must adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps. They also must take reasonable non-discriminatory steps to maximize use of such units by eligible individuals.</li> <li>When an accessible unit becomes vacant, before offering the unit to a non-handicapped individual, the owner/manager should offer the unit: first, to a current occupant of the project requiring the accessibility feature; and second, to an eligible qualified applicant on the waiting list requiring the accessibility features.</li> <li>The usual standards for ensuring compliance with Section 504 are the Uniform Federal Accessibility Standards (UFAS), although deviations are permitted in specific circumstances.</li> </ul> |  |
| Provide Program Accessibility   |  |
| <ul style="list-style-type: none"> <li>Individuals with handicaps must be able to find out about, apply for and participate in Federally-assisted programs or activities.</li> <li>Special communication systems may be needed for outreach and ongoing communication (e.g., Telecommunications Devices for the Deaf (TDD), materials on tape or in Braille, accessible locations for activities and meetings).</li> <li>Policies and procedures must be non-discriminatory (e.g., housing providers may not ask people with handicaps questions not asked of all applicants, screen individuals with handicaps differently or assess an individual's ability to live independently).</li> </ul>  |  |
| Make Employment Accessible  |  |
| <ul style="list-style-type: none"> <li>Employers must not discriminate.</li> <li>Employers must remove physical and administrative barriers to employment.</li> <li>Employers must make reasonable accommodations for individuals with known handicaps (e.g., job restructuring, providing readers or sign interpreters, making facilities accessible).</li> </ul>  |  |
| Administrative Requirements   |  |
| <ul style="list-style-type: none"> <li>If recipients or subrecipients have 15 or more employees, they must: <ul style="list-style-type: none"> <li>designate a Section 504 Coordinator, and</li> <li>notify program participants and employees of non-discrimination policies.</li> </ul> </li> <li>All recipients and subrecipients must conduct self-evaluations of compliance with Section 504.</li> </ul>   |  |

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- ✓ For any recipient or subrecipient principally involved in housing or social services, **all** of the activities of the agency -- not just those directly receiving Federal assistance -- are covered under Section 504.
- ✓ Contractors and vendors are subject to Section 504 requirements only in the work they do on behalf of a recipient or subrecipient.
- ✓ The ultimate beneficiary of the Federal assistance is not subject to Section 504 requirements.
- Under Section 504, recipients and subrecipients are **not** required to take actions that create undue financial and administrative burdens or alter the fundamental nature of the program.

**EMPLOYMENT AND CONTRACTING**

- ◆ HOME requires that PJs comply with the regulations discussed below governing employment and contracting opportunities. These concern equal opportunity, labor requirements and contracting/procurement procedures.

**Equal Opportunity**

- ◆ PJs must comply with the following regulations that ensure equal opportunity for employment and contracting.
  - Equal Employment Opportunity, Executive Order 11246, as amended: Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000. Implementing regulations may be found at 41 CFR Part 60.
  - Section 3 of the Housing and Urban Development Act of 1968: Requires that, to the greatest extent feasible, opportunities for training and employment arising from HOME will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with HOME will be awarded to business concerns that are located in or owned by persons residing in the program service area. Detailed information regarding Section 3 is located in the Appendix.

- Minority/Women's Business Enterprise: Under Executive Orders 11625, 12432 and 12138, PJs must prescribe procedures acceptable to HUD for a minority outreach program to ensure the inclusion, to the maximum extent.
- Possible, of minorities and women, and entities owned by minorities and women, in all contracts. (See 24 CFR 85.36(e).) The Appendix provides guidance from HUD on acceptable.
- Outreach practices. Additional information on compliance with Minority/Women's Business Enterprise is provided in the Appendix.

### **Labor Requirements**

- ◆ HOME PJs must comply with certain regulations on wage and labor standards. In the case of Davis-Bacon and the Contract
- ◆ Work Hours and Safety Standards Acts, every contract for the construction of housing (rehabilitation or new) that contains 12 or more units assisted with HOME funds triggers the requirements.
- Davis-Bacon and Related Acts (40 USC 276(A)-7): Ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance, and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs. Additional information on compliance with Davis-Bacon requirements is provided in the Appendix.
- Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333): Provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- Copeland (Anti-Kickback) Act (40 USC 276c): Governs the deductions from paychecks that are allowable. Makes it a criminal offense to induce anyone employed on a Federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.

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- Fair Labor Standards Act of 1938, As Amended (29 USC 201, et. seq.): Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.
- ◆ Additional guidance on the applicability of Federal labor standards to HOME is provided in the Appendix.

### **Contracting and Procurement Practices**

- ◆ The HOME program is subject to certain Federal procurement rules. In addition, PJs must take measures to avoid hiring debarred or suspended contractors or subrecipients and conflict-of-interest situations. Each is briefly discussed below.
- ◆ **Procurement**: For PJs, the procurement standards of 24 CFR 85.36 apply. For nonprofit organizations receiving HOME funds other than CHDOs, to the extent that they are undertaking set-aside projects, the procurement requirements at 24 CFR Part 84 apply.
- ◆ **Conflict-of-interest**: The conflict-of-interest provisions are detailed in Chapter 2: General Administrative Requirements.
- ◆ **Debarred contractors**: HOME funds may not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension or placement of ineligibility status. PJs should check all contractors, subcontractors, lower-tier contractors and subrecipients against the Federal publication that lists debarred, suspended and ineligible contractors.

## **ENVIRONMENTAL REQUIREMENTS**

- ◆ For environmental review purposes, PJs and State Recipients are the “responsible entity” (RE) referred to in 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. In this capacity, the RE is responsible for ensuring that the environmental review process is satisfied before non-exempt HOME funds are committed to specific project site. The RE is also responsible for ensuring that property owners carry flood insurance on HOME-assisted properties that are located in a 100 year floodplain.

**Environmental Review Process**

- ◆ The environmental review process includes the following four steps:
  - Completing an environmental review of the proposed activity;
  - Publishing public notices (as applicable);
  - Submitting a HUD-form 7015.15 “Request for Release of Funds and Certification” (RROF) to HUD (or the State in case of state recipients);
  - Receiving a HUD-form 7015.16 “Authority to Use Grant Funds” or equivalent letter from HUD (or the State in the case of state recipients).

**Environmental Reviews**

- ◆ REs are responsible for undertaking environmental review for HOME funded activities. A State PJ must delegate the environmental review responsibility to its State Recipients. Subrecipient organizations may assist REs in the preparation of environmental reviews but the RE must retain certifying authority. Instructions and formats for reviews are found in HUD-CPD 782(1) entitled “Environmental Review Guide for Community Development Block Grant Programs,” and on the HOME page. CPD Notice 01-11 also provides an explanation of HOME environmental review requirements.
- ◆ REs must establish a written Environmental Review Record (ERR) for each project year. The ERR includes all documents related to each project activity. This includes:
  - The environmental review using the appropriate review formats issued by HUD or the State (see 24 CFR 58.38). The review formats include:
    - ✓ Compliance determination, and
    - ✓ Environmental assessment; OR
    - ✓ Environmental impact statement.
  - A written determination of the level of review required.
  - Supporting evidence and all relevant documents such as:
    - ✓ Special studies;



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- ✓ Maps;
- ✓ Plans;
- ✓ Photographs;
- ✓ Testimony;
- ✓ Interviews;
- ✓ Other agency reviews; and
- ✓ Written observations.
- Copies of all the following documents:
  - ✓ Required public notices;
  - ✓ Public comments (if any);
  - ✓ Request for Release of Funds and Certification form (HUD-7015.15); and
  - ✓ Authority to use Grant Funds Form (HUD-7015.16).
- ◆ The Environmental Review Record must be made available for public review.
- ◆ Citizens, agencies and organizations may object to both the Finding of No Significant Impact (FONSI) made by a certifying officer (see 24 CFR 58.43-58.46), and to the release of funds for HOME Funded projects on certain procedural grounds related to the environmental review (see 24 CFR 58.70-58.77). To avoid challenges, REs should be diligent about meeting procedural requirements.

**Implementing the Environmental Review Process**

- ◆ REs should initiate their environmental review as soon as proposed activities are identified. Contact outside agencies and organizations that are required to co-review activities or possess expert information on a subject area, e.g. state historical society, state departments of natural resources, U.S. Fish and Wildlife Service, etc. Amend reviews as more information becomes available.
- ◆ Determine the level of reviews required for each activity. The RE can make **one** of the following determinations about the activity:
  - Exempt (24 CFR 58.34a (1-11))

### NOTES

- Categorically excluded not subject to Part 58.5 (24 CFR 58.35 (b))
- Categorically excluded but may be converted to exempt (24 CFR 58.34(a)(12)).
- Categorically excluded (24 CFR 58.35(a))
- Subject to a full environmental assessment (24 CFR 58.36)
- Subject to an environmental impact statement (24 CFR 58.37).
- ◆ Aggregate project reviews when applicable (24 CFR 58.32). Aggregate activities that are related either geographically or functionally (project aggregation). For example, a PJ may perform an environmental review for all of its moderate rehabilitation projects in five neighborhoods. Note that individual site-specific reviews will be required to assure compliance with historic preservation, flood plain insurance, runaway zone notification and any other site-specific requirements. If a proposed project fits within the aggregated review, the PJ can easily update its environmental record to include the proposed project. If a project does not fit within an aggregated review because it is functionally or geographically different, the PJ must undertake additional environmental responsibilities.
- ◆ Follow the appropriate reviews when applicable (24 CFR 58.32).
- ◆ Follow the appropriate review formats referred to above for each project or group of activities.
- ◆ Publish public notices as required:
  - Notice of Finding of No Significant Impact (FONSI); and/or
  - Notice of Intent to Request Release of Funds (NOI/RROF).
- ◆ Respond to comments/objections offered by citizens, agencies or organizations as applicable.
- ◆ Submit Request for Release of Funds and Certification form to HUD (or the State).
- ◆ Wait for the approval of the Authority to Use Grant Funds form (or equivalent letter) by HUD or the relevant State agency.
- ◆ Update and amend the ERR as additional information and significant changes are made to projects.

**NOTES****Flood Insurance**

- ◆ Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) requires that Federal funds shall not be provided to an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazard areas unless:
  - The community is participating in the National Flood Insurance Program, or it has been less than a year since the community was designated as having special hazards; and
  - Flood insurance is obtained.
- ◆ REs are responsible for ensuring that property owners receiving HOME assistance take flood insurance on properties located in a 100-year floodplain. Flood insurance must be taken for the life of a loan, or the useful life of an improvement funded by a grant.

**Coastal Barriers**

- ◆ HUD Assistance may not be used for most activities proposed in the Coastal Barrier Resource System.

**Runway Clear Zone or Clear Zone**

- ◆ The RE shall advise buyers of existing property whether the property is located in a runway clear zone or clear zone. Additional, the RE shall inform the buyer of the implications of such a location, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

**SITE AND NEIGHBORHOOD STANDARDS**

- ◆ Housing provided through the HOME program must promote greater choice of housing opportunities. Specific rules are as follows:
  - HOME-provided housing must be suitable from the standpoint of facilitating and furthering full compliance with the Title VI of the Civil Rights Act - 1964, the Fair Housing Act and Executive Order 11063.

- The Final Rule requires only new construction rental projects to meet site and neighborhood standards from 24 CFR 983.6(b), which places limiting conditions on building in areas of "minority concentration" and that are "racially mixed."

### LEAD-BASED PAINT

- ◆ All units in a project assisted with HOME funds must comply with the regulation implementation Title X of the 1992 Housing and Community Development Act (24 CFR Part 35).
- ◆ This regulation has been in effect since September 15, 2000.

### OVERVIEW

- ◆ The lead-based paint regulation at 24 CFR Part 35 consolidates all lead-based paint requirements for HUD-assisted housing.
  - Purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead.
  - The regulation is divided into subparts. Subparts that apply to the HOME program include:
    - ✓ Subpart A: Disclosure
    - ✓ Subpart B: General Requirements and Definitions
    - ✓ Subpart J: Rehabilitation
    - ✓ Subpart K: Acquisition, Leasing, Support Services, and Operations
    - ✓ Subpart M: Tenant-Based Rental Assistance
    - ✓ Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

### SUMMARY OF THE REQUIREMENTS

- ◆ Approaches. HUD has defined four approaches to addressing lead-based paint in HOME-funded projects. See the following exhibit for more information about each approach.
  - Approach 1: Do No Harm
  - Approach 2: Identify and Stabilize Deteriorated Paint

**NOTES**

- Approach 3: Identify and Control Lead-Based Paint Hazards
- Approach 4: Identify and Abate Lead-Based Paint Hazards

**TYPES OF REQUIREMENTS**

- ◆ The lead-based paint requirements established by the regulation fall into the five major categories listed below:
  - **Notification.** Grantees must meet four notification requirements.
    - ✓ **Lead Hazard Information Pamphlet.** Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.

## CHAPTER 11: OTHER FEDERAL REQUIREMENTS

### FOUR APPROACHES TO IMPLEMENTING LEAD HAZARD EVALUATION AND REDUCTION

| APPROACH 1. DO NO HARM  |  |   |
|---|--|---|
| <b>Lead Hazard Evaluation</b> <ul style="list-style-type: none"> <li>Paint testing performed on surfaces to be disturbed.</li> </ul>  | <b>Lead Hazard Reduction</b> <ul style="list-style-type: none"> <li>Repair surfaces disturbed during work.</li> <li>Safe work practices used when working on areas identified as lead-based paint.</li> <li>Clearance performed.</li> </ul>  | <b>Options</b> <ul style="list-style-type: none"> <li>Presume lead-based paint is present and use safe work practices on all surfaces being disturbed.</li> </ul>   |
| APPROACH 2. IDENTIFY AND STABILIZE DETERIORATED PAINT   |  |   |
| <b>Lead Hazard Evaluation</b> <ul style="list-style-type: none"> <li>Visual assessment performed to identify deteriorated paint.</li> </ul>   | <b>Lead Hazard Reduction</b> <ul style="list-style-type: none"> <li>Paint stabilization of identified deteriorated paint.</li> <li>Safe work practices used.</li> <li>Clearance performed.</li> </ul>  | <b>Options</b> <ul style="list-style-type: none"> <li>Perform paint testing on deteriorated paint. Safe work practice requirements only apply to lead-based paint.</li> </ul>   |
| APPROACH 3. IDENTIFY AND CONTROL LEAD HAZARDS   |  |   |
| <b>Lead Hazard Evaluation</b> <ul style="list-style-type: none"> <li>Paint testing performed on surfaces to be disturbed.</li> <li>Risk assessment performed on entire dwelling.</li> </ul> | <b>Lead Hazard Reduction</b> <ul style="list-style-type: none"> <li>Interim controls performed on identified hazards.</li> <li>Safe work practices used.</li> <li>Clearance performed</li> </ul>   | <b>Options</b> <ul style="list-style-type: none"> <li>Presume lead based paint and/or lead based paint hazards are present and perform standard treatments.</li> </ul>  |
| APPROACH 4. IDENTIFY AND ABATE LEAD HAZARDS   |  |   |
| <b>Lead Hazard Evaluation</b> <ul style="list-style-type: none"> <li>Paint testing performed on surfaces to be disturbed.</li> <li>Risk assessment performed on entire dwelling.</li> </ul> | <b>Lead Hazard Reduction</b> <ul style="list-style-type: none"> <li>Abatement performed on identified hazards.</li> <li>Interim controls performed on identified hazards on the exterior that are not disturbed by rehabilitation.</li> <li>Safe work practices used.</li> <li>Clearance performed.</li> </ul> | <b>Options</b> <ul style="list-style-type: none"> <li>Presume lead-based paint and/or lead-based paint hazards are present and perform abatement on all applicable surfaces – deteriorated, impact, friction, chewable surfaces, and surfaces to be disturbed.</li> </ul> |

**NOTES**

- ✓ **Disclosure.** Check that property owners have provided purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
- ✓ **Notice of Lead Hazard Evaluation or Presumption.** Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.
- **Notice of Lead Hazard Reduction Activity.** Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.
- **Lead Hazard Evaluation.** The evaluation activity required depends on the nature of the activity funded and the amount of Federal funding. Evaluation methods include visual assessments, paint testing, and risk assessments.
- **Lead Hazard Reduction.** The reduction activity required depends on the nature of the activity funded and the amount of Federal funding. Reduction methods described include paint stabilization, interim controls, standard treatments, and abatement.
- **Ongoing Maintenance.** Ongoing maintenance is required if the grantee has an ongoing relationship with the Federal government (e.g. Rental or TBRA activities). Ongoing maintenance includes periodic visual assessments to determine if lead-based paint hazards have reappeared.
- **Response to Children with Environmental Intervention Blood Lead Levels (EIBLL).** When a poisoned child with an environmental intervention blood lead level is identified in some types of properties, the new regulation prescribes certain activities. (For HOME purposes, these requirements apply only to TBRA.)

Exhibit 11-1 provides a summary of required activities.

## **COMPLIANCE**

### **Penalties [24 CFR 35.170]**

- ◆ Failure to comply with the lead-based paint requirements under the new regulation will be subject to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject to other penalties available under state or local law.

| <b>EXHIBIT 11-1</b><br><b>SUMMARY OF REQUIRED ACTIVITIES TO ADDRESS LEAD-BASED PAINT</b> |  |
|--|--|
| <b>Category</b>  | <b>Required Activities</b>   |
| <b>Notification</b>  | <p>All of the following notices must be provided as appropriate:</p> <ul style="list-style-type: none"> <li>✓ Pamphlet</li> <li>✓ Disclosure</li> <li>✓ Notice of Lead Hazard Evaluation or Presumption</li> <li>✓ Notice of Lead Hazard Reduction Activity</li> </ul>   |
| <b>Lead Hazard Evaluation</b>  | <p>One or more of the following may apply:</p> <ul style="list-style-type: none"> <li>✓ Visual Assessment*</li> <li>✓ Paint Testing</li> <li>✓ Risk Assessment (or Lead Hazard Screen)</li> </ul>  |
| <b>Lead Hazard Reduction</b>   | <p>One or more of the following may apply:</p> <ul style="list-style-type: none"> <li>✓ Paint Stabilization</li> <li>✓ Interim Controls (or Standard Treatments)</li> <li>✓ Abatement</li> </ul> <p>The following always apply:</p> <ul style="list-style-type: none"> <li>✓ Safe Work Practices</li> <li>✓ Clearance</li> </ul> |
| <b>Ongoing Maintenance</b>   | <p>This requirement may apply:</p> <ul style="list-style-type: none"> <li>✓ Inspect and maintain lead hazard reduction work.</li> </ul>  |
| <b>Response to Children with Environmental Intervention Blood Lead Level (EIBLL)</b>     | <p>These requirements may apply. If they do, all of the following steps must be taken:</p> <ul style="list-style-type: none"> <li>✓ Sharing and Comparing Information</li> <li>✓ Risk Assessment</li> <li>✓ Interim Controls or Abatement</li> <li>✓ Notices and Disclosure</li> </ul>   |

\* A visual assessment is not considered a form of evaluation in the regulation, therefore, there is no requirement for a Notice of Lead Hazard Evaluation associated with this activity.



- ◆ Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve grantees of the responsibilities under the new regulation.

### **Addressing Other Regulations and Laws [24 CFR 35.145]**

- ◆ Grantees must comply with other regulations – Federal, State, tribal, and local – that apply to lead-based paint hazard evaluation and reduction. When multiple regulations cover a program activity, grantees must comply with the most stringent requirement.
- ◆ All lead-based paint activities must be performed in accordance with other applicable Federal laws and authorities. For example, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), OSHA worker safety regulations (29 CFR 1910.1200 and 29 CFR 1926.62), and other environmental laws and authorities cover activities related to lead-based paint evaluation and hazard reduction.
- ◆ HUD may modify or waive its lead-based paint requirements if it determines that the requirement duplicates a Federal, State, or local requirement and provides a comparable level of protection from lead-based paint hazards.

### **RECORDKEEPING [24 CFR 35.175]**

- ◆ There are numerous records that grantees must keep to verify that they conducted the required lead hazard response activities. Monitors should ensure these documents are located in program and project files.
  - **Lead Hazard Information Pamphlet.** A record of the distribution of the lead hazard information pamphlet is recommended, but not required.
  - **Notification, Evaluation, and Reduction Reports.** The grantee must keep a copy of each notification, lead hazard evaluation report, lead hazard reduction documentation (such as job specifications), and clearance or abatement report for at least three years, or for such other period as specified in the program regulations.
  - **Ongoing Maintenance Records.** Grantees must keep ongoing maintenance records and records of relevant building operations for use during reevaluations.

### NOTES

- ◆ **Reporting to HUD.** The grantee will provide a copy of any of the above records to HUD upon request. The following exhibit contains a summary of the notification, lead hazard evaluation, lead hazard reduction, ongoing maintenance, and environmental intervention blood lead level requirements for rehabilitation, tenant based rental assistance and homebuyer and special needs activities.

### RELOCATION

- ◆ HOME projects involving rehabilitation, conversion or demolition may be subject to the provisions of the Uniform Relocation Act. Due to the complexity of the rules and requirements governing acquisition, relocation and one-for-one replacement, this information is provided in the Appendix.

### EXHIBIT 11-2

#### LEAD PAINT: RECOMMENDED AND PROHIBITED PRACTICES

##### Safe Treatment Methods

Safe treatment methods control the spread of dust and debris. They should be preceded by proper containment practices and followed-up with proper clean-up procedures. Examples of safe treatment methods include:

- ✓ Wet scraping or wet sanding
- ✓ Chemical stripping on- or off-site (except methylene chloride)
- ✓ Replacing painted components
- ✓ Scraping with an infra-red or coil type heat gun with temperatures below 1,100 degrees Fahrenheit
- ✓ Vacuum-sanding using a sander equipped with a High Efficiency Particle Air (HEPA) filter
- ✓ Using a HEPA vacuum needle gun
- ✓ Contained hydroblasting or high pressure wash with a HEPA vacuum
- ✓ Abrasive sanding with a HEPA vacuum
- ✓ Covering the painted surface with durable materials (such as wallboard) with joints sealed and caulked.

##### Prohibited Methods

Prohibited methods can spread lead dust or lead fumes.

- ✗ Open flame burning or torching
- ✗ Machine sanding or grinding without HEPA exhaust
- ✗ Uncontained hydroblasting or high pressure wash
- ✗ Abrasive blasting or sandblasting without a HEPA vacuum exhaust
- ✗ Heat guns operating above 1,100 degrees Fahrenheit
- ✗ Chemical paint strippers containing methylene chloride
- ✗ Dry scraping (except around electrical outlets or in conjunction with heat guns).

For more information about safe and prohibited methods, see the 1995 HUD Guidelines for the Evaluation and Control of Lead-Based Paint in Housing.

## CHAPTER 11: OTHER FEDERAL REQUIREMENTS

**SUMMARY OF LEAD-BASED PAINT REQUIREMENTS BY ACTIVITY**

|   | Homeowner and Rental Rehabilitation<br>(Subpart J)                  |  |  | TBRA<br>(Subpart M)  | A,L,SS,O<br>(Subpart K)  |
|---|---|--|--|--|--|
|   | ≤\$5,000  | \$5,000 - \$25,000   | >\$25,000  |  | Homebuyer and Special Needs*   |
| <b>Approach to Lead Hazard Evaluation and Reduction</b>   | 1. Do no harm   | 3. Identify and control lead hazards                               | 4. Identify and abate lead hazards   | 2. Identify and stabilize deteriorated paint   | 2. Identify and stabilize deteriorated paint   |
| <b>Notification</b>   | Yes   | Yes  | Yes  | Yes  | Yes  |
| <b>Lead Hazard Evaluation</b>   | Paint Testing   | Paint Testing and Risk Assessment                                  | Paint Testing and Risk Assessment  | Visual Assessment  | Visual Assessment  |
| <b>Lead Hazard Reduction</b>  | Repair surfaces disturbed during rehabilitation                     | Interim Controls   | Abatement<br>(Interim Controls on exterior surfaces not disturbed by rehabilitation) | Paint Stabilization  | Paint Stabilization  |
|   | Safe work practices<br>Clearance                                    | Safe work practices<br>Clearance                                   | Safe work practices<br>Clearance   | Safe work practices<br>Clearance   | Safe work practices<br>Clearance   |
| <b>Ongoing Maintenance</b>  | No  | No   | No   | Yes  | Yes (if ongoing relationship)  |
| <b>EIBLL Requirements</b>   | No  | No   | No   | Yes  | No   |
| <b>Options</b>  | Presume lead-based paint<br>Use safe work practices on all surfaces | Presume lead-based paint and/or hazards<br>Use standard treatments | Presume lead-based paint and/or hazards<br>Abate all applicable surfaces             | Test deteriorated paint.<br>Use safe work practices only on lead-based paint surfaces. | Test deteriorated paint.<br>Use safe work practices only on lead-based paint surfaces. |
| <p>* Special Needs Housing may be subject to the requirements of Subpart J, M, or K depending on the nature of the activity undertaken. However, since most special needs housing involves acquisition, leasing, support services, and operations, for the purposes of this table, it has been placed in this column.</p> |   |  |  |  |  |